

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NAVAJO NATION,

Plaintiff,

V.

MICHAEL REGAN, *et al.*,

Defendants.

No. 2:20-cv-602-MV-GJF

**PLAINTIFF NAVAJO NATION’S NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF VACATUR (ECF NO. 34)**

Pursuant to D.N.M.LR-Civ. 7.8(b), Plaintiff Navajo Nation files this Notice to alert the Court to a recent decision from the United States District Court for the District of Arizona remanding and vacating the 2020 Navigable Waters Protection Rule (“NWPR”), the same rule for which the Navajo Nation seeks vacatur.

In *Pasqua Yaqui Tribe v. United States Environmental Protection Agency*, No. CV-20-00266-TUC-RM (D. Ariz.) (order issued Aug. 30, 2021) (attached as Exhibit 1), the court granted plaintiff tribes’ request that remand of the NWPR include vacatur, concluding that “[t]he seriousness of the Agencies’ errors in enacting the NWPR, the likelihood that the Agencies will alter the NWPR’s definition of ‘waters of the United States,’ and the possibility of serious environmental harm if the NWPR remains in place upon remand, all weigh in favor of remand with vacatur.” *Id.* at 10. Moreover, the court determined that “[t]he consequences of an interim change do not support the unusual remedy of remand without vacatur.” *Id.*

The Navajo Nation's request that this Court vacate the NWPR is based on an evaluation of the same factors identified in *Pasqua Yaqui* as supporting vacatur, *see* ECF No. 34 at 7-15. Defendant-intervenors in *Pasqua Yaqui* are expected to appeal that court's decision, and therefore relief in this Court remains necessary.

Dated: September 1, 2021

Respectfully submitted,

JILL GRANT & ASSOCIATES, LLC

/s/ Jill Elise Grant

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* D.N.M.LR-Civ. 83.3(a) certification

Attorneys for Plaintiff Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2021, I caused the following to be filed and served upon counsel of record via the Court's CM/ECF filing system:

PLAINTIFF NAVAJO NATION'S NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF VACATUR (ECF NO. 34)

/s/ Ian Paul Fisher